IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1977 of 2004
To
FIRST APPEAL No.1985 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAQ OFFICER - Appellant
Versus
VADHER VAJABHAI GHANABHAI & ORS. - Respondents

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Appearance :
MR KRUNAL D. PANDYA, AGP for Appellant.
MR AMIT C NANAVATI for Original Claimants.
None for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908 is the legality of common judgment and award dated July 9, 2001 rendered by the learned Extra Assistant Judge, Mehsana, in Land Acquisition Reference Nos.868 of 1996 to 876 of 1996 by which the claimants have been awarded additional amount of compensation at the rate of Rs.17.90 Paise per square metre for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.2.10 Paise per square metre for irrigated lands and Rs.1.40 Paise per square metre for non-irrigated lands by his award dated July 5, 1994.

2. Sardar Sarovar Narmada Nigam Limited, Gandhinagar, proposed to the State Government to acquire agricultural lands of Village: Tuvad, Taluka: Sami, District: Patan for the public purpose of construction of Canal under the Narmada Project. On

perusal of the said proposal, the State Government was satisfied that the lands of Village: Tuvad, which were specified therein, were likely to be needed for the said public purpose. Therefor, the State Government issued a notification under Section 4(1) of the Act, which was published in the official gazette on July 2, 1992. Thereafter, necessary inquiry under Section 5(A-2) of the Act was made by the Special Land Acquisition Officer and a report was submitted to the State Government on the basis of which, a declaration under Section 6 of the Act was made, which was published in the official gazette on January 4, 1993. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.30/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by award dated July 5, 1994 offered compensation to the claimants at the rate of Rs.2.10 Paise per square

metre for irrigated lands and Rs.1.40 Paise per square metre for their non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Mehsana, where they were numbered as Land Acquisition Reference Nos.868 of 1996 to 876 of 1996.

3. On behalf of the claimants, witness Vasubhai Ratubhai Sendhava was examined at Exhibit 15. The witness for the claimants stated that the lands acquired were highly fertile and as water for irrigation was available, each claimant was taking different crops in different seasons. According to this witness, each claimant was able to raise crops of cotton, gram, cumin-seeds, etc., which are known as

'cash-crops'. It was further stated by the witness that each claimant was able to raise crops worth Rs.45,000/- per year and after deducting 25% towards the cost of cultivation, each claimant was earning substantial income from the sale of agricultural produces. The witness claimed that the lands of the adjoining Village: Chandroda were acquired for the public purpose and as the Court had awarded compensation at the rate of Rs.11/- per square metre to the claimants, whose lands were acquired from Village: Chandroda, the claimants in instant case should also be awarded compensation on the basis of the said award.

In cross-examination, the witness admitted that he had no water-bore of his own, but he was owning 50 *vighas* of lands, which were situated in different areas. It was also admitted by the witness that water in the area was scanty and irregular. However, in cross-examination also, it was maintained by the witness that each claimant was able to raise

substantial crops, which were being sold at Harij.

4. On behalf of the Acquiring Authorities, witness Harshkumar Mansukhlal Vora, who was then discharging duties as Special Land Acquisition Officer, was examined at Exhibit 17. The witness in cross-examination by the learned advocate for the claimants admitted that he was not associated with the proceedings initiated for acquiring the lands from Village: Tuvad nor had any personal information about the award made by his predecessor in office. The witness further admitted that he had neither seen the lands acquired nor the village and that he was deposing before the Court on the basis of official record available with him.

5. Yet another witness, i.e. Sureshchandra Gajanan Bhope, who was then discharging duties as Executive Engineer in Sardar Sarovar Nigam, Kutch Branch, Canal, Division No.1/5, was examined at Exhibit 19. This witness mentioned that before determining the

amount of compensation payable to the claimants, the Special Land Acquisition Officers had taken into consideration the relevant factors and, therefore, the claimants were not entitled to enhanced compensation. Further, in his cross-examination, the witness had to admit that he was not associated with process of making award at all nor he had personal knowledge about the acquisition proceedings initiated for acquiring the lands from Village: Tuvad. What was asserted by the witness was that the boundaries of Village: Tuvad and Village: Chandroda were adjoining each other.

6. On the basis of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Chandroda was relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court noticed that notification under Section 4(1) of the Act was

published in the official gazette on October 18, 1984 for the purpose of acquiring the lands from the Village: Chandroda whereas in the instant case, notification under Section 4(1) of the Act was published in the official gazette on July 2, 1992 and in view of time-gap of about of eight years between the publication of notifications in the official gazette, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.17.90 Paise per square metre by the impugned award giving rise to the present appeals.

7. This Court has heard Mr.Krunal D. Pandya, learned Assistant Government Pleader for the appellant, and Mr.Amit C. Nanavati, learned counsel for the claimant(s) in each appeal, at length and in great detail. This Court has also considered the Record & Proceedings received by the Court as well as the paper-book supplied by the learned counsel for the

claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is true that no positive evidence could be adduced by the claimants to establish that the lands, which were acquired previously from Village: Chandroda, were similar in all respects to the lands acquired in the instant case from Village: Tuvad. However, Exhibit 13, which is previous award of the Reference Court relating to the lands of Village: Chandroda, indicates that irrigated lands were acquired from Village: Chandroda and that different crops such as cotton, gram, etc. were being grown on those lands. Further, as admitted by the witness Sureshchandra Bhope, whose testimony was recorded at Exhibit 19, the boundaries of Village: Tuvad and Village: Chandroda are adjoining to each other. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court

relating to the lands of Village: Chandroda for the purpose of determining the market value of the lands acquired from Village: Tuvad in the instant case. It is well settled that previous award of the Reference Court relating to the lands of a Village, which has attained finality, can be taken into consideration for the purpose of determining the market value of the lands acquired subsequently from the adjoining village if, by and large, it is established that the lands were similar. Crop-pattern mentioned above indicates that, by and large, the lands of Village: Chandroda, which were acquired earlier, were similar to the lands acquired in the instant case. However, in view of paucity of evidence adduced by the claimants and admission made by the witness for the claimants that rainy season was irregular and rain was scanty, a broad consensus is arrived at between the learned counsels for the parties that interest of justice would be served if the claimants are awarded in all compensation at the rate of Rs.15/- per square metre for their acquired lands. Therefore, the impugned

award awarding compensation to the claimants at the rate of Rs.20/- per square metre for irrigated lands and Rs.19.30 Paise per square metre for non-irrigated lands, deserves to be suitably modified by holding that the claimants, in all, would be entitled to compensation at the rate of Rs.15/- per square metre.

9. Mr.Amit C. Nanavati, learned counsel for the claimants, has pointed out that placing reliance on the decision of the Supreme Court rendered in ***Special Land Acquisition Officer, Bharuch vs. Jagdishbhai, 1997 (2) G.L.H. (UJ) 17,*** the Reference Court has declined to grant interest on the amount awarded under Sections 23(2) and 23(1-A) of the Act, which is erroneous and, therefore, appropriate direction should be given to the appellant to pay the said amount to the claimants. This Court has considered the submission advanced by the learned counsel for the claimants. In ***Vijay Cotton Oil Mills Limited vs. State of Gujarat, AIR 1991 SC 656,*** the Supreme Court has ruled that interest on

compensation can be claimed by the claimants at any stage of proceedings under the Act notwithstanding the fact that separate appeals/cross objections are not filed by the claimants before the High Court. What is emphasized by the Supreme Court in the said decision is that interest on compensation can be claimed by the claimants in State's Appeal. In ***Sunder vs. Union of India, (2001) 7 SCC 211,*** the Five Judge Constitution Bench of the Supreme Court has ruled that a person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. In view of the settled legal position on the point, this Court is of the opinion that appropriate directions will have to be given to the appellant to pay the interest to the claimants on the amount, which is awarded under Sections 23(1-A) and 23(2) of the Act.

10. For the foregoing reasons, the appeals partly succeed. The judgment and award dated July 9, 2001 rendered by the learned Extra Assistant Judge,

Mehsana, in Land Acquisition Reference Nos.868 of 1996 to 876 of 1996 awarding additional amount of compensation to the claimants at the rate of Rs.17.90 Paise per square metre over and above compensation offered to the claimants at the rate of Rs.2.10 Paise per square metre for irrigated lands and Rs.1.40 Paise per square metre for non-irrigated lands by the Special Land Acquisition Officer *vide* award dated July 5, 1994, is hereby modified and it is held that the claimants, in all, would be entitled to compensation at the rate of Rs.15/- per square metre for their acquired lands. The appellant is directed to pay interest to the claimants on the amount, which is awarded under Sections 23(2) and 23(1-A) of the Act. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra